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EXHIBITS (CONTINUED)

E Los Angeles County Sheriff's Department Scientific Services Bureau incident scene sketch/legend, evidence list, and field investigation notes dated March 06, 2016

F One (1) USB flash drive containing photographs of Deputies Brad Witkosky and Arnulfo Sanchez, incident scene, and Deputy Brad Witkosky's firearm

G One (1) DVD-R containing radio traffic from the Sheriff's Communication Center

H A photograph of the incident location provided by Homicide investigators was signed by Deputy Brad Witkosky, indicating the suspect's vehicle and his position at the time of the shooting

I A photograph of the incident location provided by Homicide investigators was signed by Deputy Arnulfo Sanchez, indicating the suspect's vehicle and Deputy Brad Witkosky's position at the time of the shooting

MISCELLANEOUS DOCUMENTS

Administrative Rights Force/Shooting Form signed by Deputy Brad Witkosky

Administrative Rights Force/Shooting Form signed by Deputy Arnulfo Sanchez

Los Angeles County Sheriff's Department Employee Range Qualification for Deputy Brad Witkosky

Copy of South Los Angeles Station EM Shift In-Service dated Sunday, March 6, 2016

One Return Domestic Receipt and one Unclaimed Piece of Mail for Witness [redacted]

One Return Domestic Receipt for Suspect Norvell Melvin Fobi



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
JOHN K. SPILLANE • Chief Deputy District Attorney
JOSEPH P. ESPOSITO • Assistant District Attorney

SCOTT K. GOODWIN • Director

July 9, 2018

Captain Christopher Bergner
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: Officer Involved Shooting of Norvell Fobi
J.S.I.D. File #16-0099
L.A.S.D. File #016-01989-0378-055

Dear Captain Bergner:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 5, 2016, non-fatal shooting of Norvell Fobi by a member of the Los Angeles County Sheriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

By

SHANNON PRESBY
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Brad Witkosky, #[redacted]

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MEMORANDUM

TO: CAPTAIN CHRISTOPHER BERGNER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Norvell Fobi
J.S.I.D. File #16-0099
L.A.S.D. File #016-01989-0378-055

DATE: July 9, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 5, 2016, non-fatal shooting of Norvell Fobi by Los Angeles County Sheriff Deputy Brad Witkosky. It is our conclusion that there is insufficient evidence to prove beyond a reasonable doubt that the deputy did not act in lawful self-defense.

The District Attorney's Command Center was notified of the shooting on March 6, 2016, at approximately 12:57 a.m. The District Attorney Response Team responded and was given a briefing and a walk-through of the scene.

The following analysis is based on reports prepared by the Los Angeles County Sheriff's Department (LASD), submitted to this office by Detectives Eddie Brown and Toni Martinez, LASD, Homicide Bureau. Deputy Witkosky provided a voluntary statement which was considered as part of this analysis.

FACTUAL ANALYSIS

On March 5, 2016, at approximately 11:00 p.m., LASD Deputies Arnulfo Sanchez and Brad Witkosky were driving southbound on Vermont Avenue in a marked black and white patrol car when they observed a gray Hyundai travelling in front of them. The Hyundai had tinted windows in violation of Vehicle Code section 26708(a)(1). Sanchez moved the patrol car behind the Hyundai, at which time the Hyundai began to straddle the number one and two lanes. The Hyundai then turned east onto 120th Street without signaling in violation Vehicle Code section 22107. Sanchez activated the patrol car's overhead light bar and initiated a traffic stop for the Vehicle Code violations. The Hyundai immediately pulled over to the south curb of 120th Street just west of Ainsworth Street in the County of Los Angeles.

Sanchez approached the driver's side of the Hyundai, while Witkosky approached the passenger side. Witkosky told the driver, later identified as Norvell Fobi, to roll down the windows, turn off the engine and to keep his hands on the steering wheel. Fobi, the sole occupant, complied. Sanchez asked Fobi for his driver license, registration and insurance. Fobi provided his license and insurance. Sanchez returned to the patrol car in order to run Fobi's information on the patrol car's mobile digital computer.

Witkosky remained at the front passenger door and observed Fobi remove his hands from the steering wheel. Fobi moved his left hand down to his left thigh near the driver's door panel and his right hand toward the center console. Witkosky told Fobi to keep his hands on the steering wheel. Fobi complied. Fobi told Witkosky that he was making him nervous. Witkosky attempted to have a conversation with Fobi, however Fobi ignored him and began to mumble and repeat the word "Yep." Fobi then reached his right hand behind the front passenger seat and out of Witkosky's view. Witkosky pointed his service weapon at Fobi and told him to keep his hands on the steering wheel and to stop moving around.[1] Fobi ignored the orders and looked back and forth between the center console and behind the front passenger seat. It appeared to Witkosky that Fobi was trying to decide what he should grab. Fobi then moved his left hand back to the side of his left thigh and out of Witkosky's view. At about the same time, Fobi turned on the car's engine with his right hand and revved the engine. Fobi ignored multiple orders by Witkosky to turn off the engine. Instead, Fobi put the car into drive and jerked the steering wheel to the right causing the vehicle to lunge toward Witkosky. In fear for his life, Witkosky took several steps back and fired his service weapon at Fobi four times. In that moment, Witkosky believed that Fobi was about to strike him with the vehicle. Witkosky also feared that Fobi was arming himself with his left hand and moving the car in a position where he could shoot at Witkosky while fleeing. Fobi fled eastbound on 120th Street. Witkosky ran back to the patrol car and he and Sanchez followed Fobi. The deputies were unable to locate the Hyundai and terminated the pursuit approximately one half mile east of the traffic stop location.

Sanchez stated he was seated in the driver's seat of the patrol car running Fobi's information when he heard a gunshot. Sanchez immediately looked up and saw Witkosky discharge his service weapon one to two times into the passenger side of the Hyundai. Sanchez exited the patrol car and broadcast that shots had been fired as well as their location. Sanchez and Witkosky reentered the patrol car and went in pursuit of Fobi. They were unable to locate the Hyundai.

During the investigation at the shooting scene, deputies were advised that a gunshot wound victim had been admitted into the emergency room of Gardena Memorial Hospital. Deputies responded to the hospital and were directed to Fobi who was being treated for multiple gunshot wounds. Fobi was ultimately transferred to Harbor-UCLA Medical Center.

A review of the hospital surveillance video showed the gray Hyundai pulling up in front of the emergency room. Fobi exited the front passenger seat. The driver and rear passenger assisted

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[1] Witkosky had drawn his service weapon while approaching the Hyundai because he could not see inside the vehicle due to the tinted windows.

Fobi into the hospital. Moments later, a man is seen entering the driver's door of the Hyundai and the car is driven out of the camera's view.[2]

Statement of [redacted]

[redacted] on the [redacted] of an [redacted] that overlooks the location of the officer involved shooting. On March 5, 2016, at approximately 11:09 p.m., [redacted] heard the sound of screeching as if a vehicle was breaking hard. Moments later, [redacted] heard a gunshot. [redacted] looked out her bedroom window and observed Witkosky standing a few feet north and a few feet west of the rear bumper of her Honda Accord. The Honda was parked on the south curb of 120th Street. Witkosky fired his service weapon approximately three times in an eastern direction. [redacted] could not see what Witkosky was shooting at from her position. Immediately after the shooting, Witkosky yelled something to the effect of "Where are you going?" or "Come back!" Witkosky then ran back to his patrol car and entered the passenger side. The patrol car sped off east on 120th Street and out of her view. A short time later, additional patrol cars arrived and cordoned off the area.

[redacted] discovered damage to her vehicle that was not present prior to the shooting. There were a series of lateral, black transfers along the driver's side of her Honda. The marks were at about the height of the axle and above. They began at the rear wheel well and continued along the length of the vehicle ending at the corner of the front bumper. The black transfer marks were of an unknown substance but could have been paint, plastic or rubber.

Ballistic Evidence

Three expended shell casings were recovered on the ground near the Honda Accord. One casing was located below where the front and rear doors meet. A second was located at the left rear bumper of the Honda. The third was located one foot from the right rear bumper of the Honda in the grass parkway by the curb. A fourth shell casing was discovered by LASD Deputy Sheriff Jorge Perez near the curb line by the Honda. However, during the investigation a heavy rain began to fall and the casing became submerged in water and was washed away.

Statement of Deputy [redacted]

On March 18, 2016, LASD Deputies [redacted] and Michael Jeffrey were providing hospital security for Fobi at Harbor-UCLA Medical Center. [redacted] and Fobi were speaking about a past case where [redacted] During their conversation, Fobi brought up the officer involved shooting. Fobi told [redacted] that he had a loaded 9mm Beretta semiautomatic handgun on the rear passenger floorboard of the Hyundai when he was stopped by Witkosky and Sanchez. The firearm was loaded with eight rounds in the magazine and one round in the chamber. Fobi told [redacted] that during the traffic stop he turned on the car's engine and told Witkosky, "I'm out of here." Fobi intended to initiate a pursuit so he could throw the

[2] The two men who assisted Fobi into the hospital were identified as [redacted] and [redacted] They were interviewed by investigators and stated that they were standing outside a residence in the City of Gardena when Fobi drove up in the Hyundai. Fobi advised them that he had been shot. They entered the Hyundai and [redacted] drove Fobi to the hospital. [redacted] and [redacted] denied any knowledge of the Hyundai's present location.

firearm from the car then surrender once he distanced himself from the gun. Fobi stated that Witkosky fired his service weapon four times as Fobi began to drive away.

Statement of Detective Valerie Franco

On March 19, 2016, LASD Detective Valerie Franco was providing hospital security for Fobi. Fobi began to talk to Franco about the officer involved shooting. Fobi stated that he did not intend to hurt the deputies and only wanted to lead them on a small pursuit so he could throw out the gun he had in his car. Witkosky fired his service weapon at Fobi as soon as Fobi "hit the gas."

Statement of Norvell Fobi

On March 22, 2016, investigators interviewed Fobi at the Los Angeles County USC Medical Center (LACUSC).[3] Investigators read Fobi his Miranda Rights and Fobi agreed to speak with them about the officer involved shooting.

Fobi stated that he was speeding when he was pulled over by Sanchez and Witkosky. Fobi was on his way to meet some friends. Fobi pulled to the curb and the deputies approached on either side of his car. Fobi gave Sanchez his license and insurance information. Fobi did not have the Hyundai's registration. Sanchez returned to the patrol car. Fobi stated that he had a loaded handgun underneath the rear passenger seat and did not want the deputies to find it. Fobi told Witkosky through the open passenger window, "I'm fixing to leave." Fobi was going to flee the location in order to get rid of the gun. Fobi did not want to go back to prison.[4] At that time, both of Fobi's hands were on the steering wheel. Fobi turned on the car's ignition with his right hand and put the car into drive. Witkosky fired his service weapon into the car before Fobi moved the car. Once the shooting began, Fobi sped eastbound away from the location. Fobi denied ever reaching behind the passenger seat or to his left side. Fobi denied driving his car at Witkosky. Fobi did not remember whether or not he hit a parked car.

Fobi drove to a friend's house and Stark drove him to Gardena Memorial Hospital. Fobi sustained three gunshot wounds to the left elbow, left thigh and right flank.

Fobi's [redacted] told him that he was hiding the Hyundai from the police.[5] Fobi denied knowledge of the car's location. In the presence of investigators, Fobi called his [redacted] and told him that investigators needed the Hyundai in order to process it for evidence. [redacted] requested the investigators' telephone number. [redacted] never contacted the investigators and the Hyundai has not been located.

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[3] Fobi was transferred to the jail unit of the LACUSC on March 19, 2016. At that time, Fobi was in custody on a probation violation hold.

[4] Fobi was [redacted] Fobi was on [redacted]

[5] A telephone call between Norvell and [redacted] was surreptitiously recorded on March 19, 2016, while Norvell was in custody at the LASD Southwest Sheriff Station before being transported to LACUSC. During the phone call, [redacted] stated that the Hyundai was "MIA and they won't get it."

Criminal Prosecution of Norvell Fobi

Fobi was charged in case YA093933 with possession of a firearm by a felon and resisting a peace officer. Fobi was also charged with misdemeanor hit and run causing damage. On May 16, 2017, Fobi pled guilty to one count of evading a peace officer and was sentenced to three years felony probation and 240 days in county jail.

LEGAL ANALYSIS

The use of deadly force in self-defense or in defense of another is justifiable if the person claiming the right actually and reasonably believed (1) that he or the person he was defending was in imminent danger of being killed or suffering great bodily injury, (2) that the immediate use of force was necessary to defend against that danger, and (3) that he used no more force than was reasonably necessary to defend against that danger. See, *CALCRIM No. 505.*

The People have the burden of proving beyond a reasonable doubt that the use of self-defense was not justified. See, *CALCRIM No. 505.*

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

In *Graham*, the United States Supreme Court held that the reasonableness of the force used "requires careful attention to the facts and circumstances of each particular case." "Thus we must avoid substituting our personal notions of proper police procedures for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure." *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say that he shall not be justified in killing because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

The test of whether the officer's actions were objectively reasonable is "highly deferential to the police officer's need to protect himself and others." *Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1102.

"An officer is not constitutionally required to wait until he sets eyes upon the weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun." *Thompson v. Hubbard* (2001) 257 F.3d 896, 899. See *Ryder v. City of*

Topeka (1987) 814 F.2d 1412, 1419 (concluding that, because a requirement that a suspect actually have a weapon would place police in "a dangerous and unreasonable situation ... whether a particular seizure is reasonable is dependent on the 'totality of circumstances,' and not simply on whether the suspect was actually armed.")

CONCLUSION

The evidence examined shows that when Fobi was pulled over by Witkosky and Sanchez for traffic violations, he had a loaded semiautomatic firearm behind the passenger seat of the Hyundai. By his own admission, Fobi feared that the deputies would discover the weapon and that he would be returned to state prison. Fobi made the decision to flee the scene in order to toss the weapon from the car.

According to Witkosky, during the traffic stop, Fobi reached his right hand behind the rear passenger seat and placed his left hand down by his left thigh and out of Witkosky's view. Fobi ignored Witkosky's commands to keep his hands on the steering wheel. Instead, according to Witkosky, Fobi turned on his car and jerked the wheel causing it to lunge toward Witkosky. Fobi's actions placed Witkosky in fear for his life and he responded with deadly force to stop Fobi from striking him with the vehicle. Witkosky also feared that Fobi was in the process of arming himself in order to shoot at him while escaping.

Fobi denied reaching behind the rear passenger seat or down by his left thigh. However, the fact that Fobi admits that the loaded firearm was on the rear passenger floorboard, lends credence to Witkosky's account. At the time that Witkosky provided his statement, investigators were unaware that there was a firearm in the Hyundai or its exact location.

Fobi also denied driving his car toward Witkosky, however the damage to [redacted] Honda Accord suggests that Fobi did not immediately drive away from the curb when he fled. After hearing a gunshot, [redacted] looked outside and observed Witkosky standing on the driver's side of her car near the rear bumper. Witkosky was firing in an easterly direction and Fobi's car was already out of view. [redacted] discovered black transfer marks down the length of the driver's side of her car that were not present before the shooting. The fresh car damage along with Witkosky's position at the rear driver's side of [redacted] car tends to corroborate Witkosky's fear that he was about to be hit by Fobi's vehicle. Additionally, [redacted] heard a car screeching followed by the first gunshot, indicating that Fobi's car was in motion before Witkosky began firing. While Fobi told investigators that Witkosky fired his service weapon into the Hyundai before the car moved, he told Walker and Franco that Witkosky fired at him as he drove away from the scene.

Legal Policies Manual 2.01.01 provides that it is the policy of the District Attorney's Office that criminal charges will only be filed if the admissible evidence is of such convincing force that it would warrant conviction by a reasonable and objective fact finder. In this case, the People have the burden to prove beyond a reasonable doubt that Witkosky's use of deadly force was not reasonable under the circumstances. The only witnesses to the events leading up to the shooting were Witkosky and Fobi and they contradict one another. Witkosky's statement justifies the use of deadly force in self-defense while Fobi's statement does not. A review of the facts shows that there is no independent evidence to either corroborate Fobi's version of events or to refute

Witkosky. In addition, Fobi provided inconsistent statements as to when Witkosky fired his service weapon, and the physical evidence suggests that Fobi, instead of driving away from Witkosky, drove down the length of the Honda Accord where Witkosky was seen standing. Finally, Fobi's prior felony convictions may be used to impeach his credibility.

There is insufficient evidence to prove beyond a reasonable doubt that Witkosky did not act in lawful self-defense when he used deadly force against Fobi. We are therefore closing our file and will take no further action in this manner.